IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11244 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NOORMOHAMMED RAJEBASAN MUMAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11244 of 2004
MR HARSHIT S TOLIA for Petitioner No. 1-4
Mr. Mukesh Patel, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 11/01/2005

ORAL JUDGEMENT

Rule. Shri Mukesh Patel, learned AGP waives service of Rule on behalf of the respondents. With the consent of the parties, the matter is taken up for Final Hearing today.

2. In this petition under Article 226 of the Constitution of India the petitioners have challenged the

legality and validity of the order passed by the revisional authority, i.e., Secretary, Revenue Department (Appeals), State of Gujarat dated 29.10.2003/30.10.2003 in Revision Application No. 8/99 in dismissing the same and confirming the order passed by the Deputy Collector, Palanpur, dated 11th June 1999 in RTS Fragmentation Case No. 1211 of 1996.

3. Shri Tolia, learned advocate appearing on behalf of the petitioners has submitted that earlier by order dated 9.9.1996 the Deputy Collector, Palanpur, had already held that there is no breach committed of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act and therefore the subsequent Deputy Collector has no jurisdiction to again take a contrary view and decide whether there is breach of Sections 7 and 8 of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, ["the Fragmentation Act" for short] or not. He has further submitted that so far as the judgment and order passed by the revisional authority is concerned though the revisional authority has observed that there are contradictory orders passed by the Deputy Collector and his interference is required he has dismissed the revision application confirming the order passed by the Deputy Collector, Palanpur dated 11th June 1999. Therefore he requested to allow the present Special Civil Application.

3. Shri Mukesh Patel, learned AGP has submitted that the order passed by the Deputy Collector, Palanpur dated 9th September 1996 is concerned the same cannot be relied upon by the petitioners inasmuch as the said order is passed by the Deputy Collector in exercise of powers under Rule 108(5) of the Bombay Land Revenue Rules in RTS proceedings. On the basis of the ratio laid down in the Judgment of this Court in the case of Evergreen Apartment Co-op. Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 1991(1) GLR Page 113 though the authority might be having two different jurisdictions under two different Acts while exercising powers under RTS proceedings the Deputy Collector could not have decided whether there is any breach of provisions of the Fragmentation Act or not. Therefore it is submitted that any order passed by the Deputy Collector, Palanpur, giving finding that there is no breach of provisions of the Fragmentation Act while deciding the question with regard to mutation entry is without jurisdiction and no reliance can be placed upon the same. He has further submitted that now the Deputy Collector, Palanpur, who is also the competent authority to decide the question and breach under the provisions of

the Fragmentation Act has independently taken the decision that there is breach of provisions of Section 7 and 8 of the Fragmentation Act. Therefore he has requested to dismiss the present Special Civil Application.

4. It is true, that while passing the order dated 9th September 1996 the Deputy Collector, Palanpur, was exercising the powers under Rule 108(5) of the Bombay Land Revenue Rules. Whie exercising such powers under Rule 108(5) of the said Rules which is popularly known to be exercised in 'RTS proceedings', the Deputy Collector as such was not required to consider whether there is any breach of provisions of the Fragmentation Act or not, as held by this Court in the case of Evergreen [supra]. Under the circumstances, any observation and/or finding given by the Deputy Collector, Palanpur, in his order dated 9th September 1996 with regard to breach of provsisions of the Fragmentation Act would not preclude the authority to consider any breach of provisions of another Act in the appropriate proceedings and the same cannot be construed to mean that the authority under another Act has no jurisdiction to decide on the question of breach under a particular Act, more particularly in the present case, i.e., the Fragmentation Act. Under the circumstances, the contention on behalf of the petitioner that the Deputy Collector, Palanpur, while passing the order dated 9th September 1996 in his exercise of powers under the Fragmentation Act holding that there is no breach of the Fragmentation Act, has no jurisdiction to decide the validity of transaction and breach of provisions of the Fragmentation Act, cannot be accepted. However, any evidence which is considered by the Deputy Collector earlier while considering the breach of the Fragmentation Act can be pressed into service by the petitioner in appropriate proceedings. From the tenor of the order passed by the Deputy Collector, Palanpur, it appears that there is no discussion as to evidence and also as to on what basis the Deputy Collector has come to the conclusion that the land in question is not a fallow land and/or irrigated land. If the order passed by the Deputy Collector earlier dated 9th September 1996 is looked into, it is clear that on certain evidence and considering the Panchnama a finding was given by the Deputy Collector that there is no breach of the provisions of the Fragmentation Act. Ofcourse, as stated above, the Deputy Collector could not have given specific finding whether there is any breach of Fragmentation Act or while considering the RTS proceedings. However, the said evidence, as stated above, can be pressed into service by the petitioner.

4.1. As stated hereinabove as there is no reason and/or evidence discussed by the Deputy Collector in his order dated 11.6.1999 while holding that there is a breach of Sections 7 and 8 of the Act, the impugned orders passed by both the authorities below require to be quashed and set aside and the matter is required to be remanded to the Deputy Collector, Palanpur, for determining whether there is breach of Sections 7 and 8 of the Act or not after giving opportunity to the petitioner. It will be open for the petitioner to rely upon evidences which were considered by the Deputy Collector in his order dated 9th September 1996, which may also be considered by the Deputy Collector while taking final decision on remand in accordance with law and on merits.

5. For the reasons stated hereinabove, the judgment and order passed by the revisional authority dated 29th October 2003 in Revision Application No. 8/1999 as well as the passed by the Deputy Collector, Palanpur, dated 11.6.1999 in RTS Fragmentation Case No.1211 of 1996 are hereby quashed and set aside and the matter is remanded to the Deputy Collector, Palanpur, for taking a fresh decision whether there is breach of Sections 7 and 8 of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 in accordance with law and on merits after giving opportunity of hearing to the petitioner in light of the observations made hereinabove. Such an exercise is required to be done by the Deputy Collector, Palanpur, within a period of four months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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